

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 3, 9 and 11-17 are pending in the application, with claims 3, 9, 14, 15 and 17 being the independent claims. Claims 1-2, 4-8 and 10 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. New claims 11-17 are sought to be added. Support for new claims 11-17 can be found in the claims as originally filed and at page 4, lines 15-16, page 11, lines 15-24, and page 15, lines 7-11 of the application. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 103***

The Examiner rejected claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2005/0032903 (Suarez-Cervieri *et al.*) in view of U.S. Patent 7,098,170 (Asrar *et al.*). Applicants respectfully traverse this rejection as it pertains to the currently pending claims.

Applicants respectfully assert that, alone or together, Suarez-Cervieri *et al.* and Asrar *et al.* do not properly establish a *prima facie* case of obviousness against the currently pending claims. In sum, there is nothing in any of the cited art, the knowledge in the art and the nature of the problem to be solved, that would provide a reason for making the specific claimed method of protecting soya bean plants against soya bean

rust, comprising applying the demethylation inhibitor (DMI) fungicide fluquinconazole to the seed of said plants.

Suarez-Cervieri *et al.* discloses a method for controlling rust disease in legumes by treating the aerial parts of plants with an aqueous preparation of strobilurin-containing formulation. The disclosure clearly focuses on the treatment of leaves (*see* paragraphs [0004] and [0041]) using a strobilurin, in particular pyraclostrobin (*see* paragraph [0016]). Suarez-Cervieri *et al.* does not disclose or even suggest protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. A person of ordinary skill in the art reading the disclosure of Suarez-Cervieri *et al.* directed to controlling rust disease by treating the aerial parts of plants with a strobilurin-containing formulation would not arrive at the claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

At paragraph [0044], Suarez-Cervieri *et al.* discloses treating seeds with strobilurin. However, this disclosure alone would not lead a person of ordinary skill in the art to the claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

The Examiner notes that the difference between the claimed invention and Suarez-Cervieri *et al.* is that the claimed method requires the use of fluquinconazole, a triazole fungicide, and that Suarez-Cervieri *et al.* is directed to the use of strobilurin-type fungicides. The disclosure of Asrar *et al.* does not cure the deficiencies of Suarez-Cervieri *et al.*

Asrar *et al.* discloses a method of improving the yield and vigor of agronomic plants such as soybeans comprising treating plants and/or their propagation material with a composition that includes an active agent, such as a diazole fungicide, a triazole fungicide, or a strobilurin-type fungicide, which has the capacity to improve the yield and/or the vigor of the plant in the absence of pest pressure by fungal plant pathogens. *See* Asrar *et al.*, Abstract. However, Asrar *et al.* does not disclose or even suggest protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. Specifically, Asrar *et al.* does not disclose soy bean rust. In addition, Asrar *et al.* does not disclose the *Phakospora* fungal species known to cause soybean rust. Moreover, the Examples provided in Asrar *et al.*, at best, disclose (i) treating soybean seeds inoculated with *Bradyrhizobium* spp. with simeconazole and (ii) the use of fluquinconazole against fungal isolates of *Gaeumannomyces graminis*. Thus, a person of ordinary skill in the art reading Suarez-Cervieri *et al.* in view of Asrar *et al.* would not envision the claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants.

Taken together, Suarez-Cervieri *et al.* and Asrar *et al.* teach the use of strobilurin-type fungicides in protecting controlling rust disease in legumes and the general use of fungicides in improving plant yield and vigor. However, none of the cited references specifically refer to the presently claimed method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. Thus, this method is not obvious in view of the cited art.

Even if the claimed method were to be considered *prima facie* obvious in view of the cited art, which Applicants assert it is not, as noted at page 4, lines 3-4 of the pending

application, it is surprising that applying fluquinconazole to the seed of soya bean plants is effective to protect soya bean plants against soya bean rust because this disease is wind-borne and not soil-borne. Moreover, Example 1 of the pending application indicates that seed treatment with fluquinconazole provides complete disease control for more than 30 days. These results are clearly unexpected in view of the cited art and would render any showing of *prima facie* obviousness moot.

The Examiner cites *In re Kerkhoven*, 205 USPQ 1069 (C.C.P.A. 1980) for the principle that "[i]t would have been prima facie obvious to combine two methods each of which is taught in the prior art to be useful for the same purpose in order to form a resultant method that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in prior art." *See* Office Action at page 6.

First, neither Suarez-Cervieri *et al.* nor Asrar *et al.* disclose a method of protecting soya bean plants against soya bean rust, comprising applying fluquinconazole to the seed of said plants. Rather, Suarez-Cervieri *et al.* discloses the use of strobilurin-type fungicides in protecting controlling rust disease in legumes, and Asrar *et al.* discloses the general use of fungicides in improving plant yield and vigor. Second, Suarez-Cervieri *et al.* and Asrar *et al.* do not disclose "two methods each of which is taught in the prior art to be useful for the same purpose." Rather Suarez-Cervieri *et al.* and Asrar *et al.* disclose different methods used for different purposes. Specifically, Suarez-Cervieri *et al.* discloses a method of protecting controlling rust disease in legumes using strobilurin-type fungicides, and Asrar *et al.* discloses a method of improving plant yield and vigor. Each of these methods is not used for the same

purpose. Thus, *In re Kerkhoven* is inapposite. As such, the claimed method is not *prima facie* obvious from the combination of the methods disclosed in Suarez-Cervieri *et al.* and Asrar *et al.*

The Examiner has not provided an adequate reason why one of ordinary skill in the art would have modified the teaching of Suarez-Cervieri *et al.* in view of Asrar *et al.* to achieve the claimed invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness.

Reconsideration and withdrawal of the outstanding rejection is earnestly solicited.

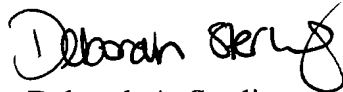
***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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Date: January 14, 2009

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